

REMARKS

The foregoing election and remarks which follow are responsive to the Office Action dated November 10, 2004, as well as the Office communication mailed December 21, 2004. In the November 10, 2004 Office Action, restriction was required between the following groups of claims:

- I. Claims 1-7 and 13-16, drawn to a bone anchor, classified in class 606, subclass 232.
- II. Claims 8-12, drawn to a bone anchor, classified in class 606, subclass 60.
- III. Claim 17, drawn to a system, classified in class 623, subclass 13.14.
- IV. Claims 18-22, drawn to a method of securing a bone anchor to bone, classified in class 606, subclass 72.

Additionally, the November 10, 2004 Office Action stated that the application contains claims directed to the following patentably distinct species of the claimed invention:

- I. Figure 2
- II. Figure 4
- III. Figures 5-7
- IV. Figures 8-10

In this respect, Applicant was required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claim shall be restricted if no generic claim is finally held to be allowable. As such, Applicant was required to include an identification of the species that is elected consonant with such requirement, and a listing of all claims readable thereon.

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In response to the November 10, 2004 Office Action, Applicant made an election to proceed with the prosecution of the group of claims appearing in Group I, namely, Claims 1-7 and 13-16, drawn to a bone anchor. Applicant's response to the Restriction Requirement was mailed on November 19, 2004.

In response thereto, the Office communication of December 21, 2004 was mailed indicating that Applicant's November 19, 2004 response to the Restriction Requirement was not fully responsive because the same did not include an election of species and the claims readable on the species elected.

In response to the Office communication mailed December 21, 2004, Applicant's counsel sought to resolve the outstanding matter with respect to Applicant's election by speaking directly with the Examiner. Specifically, Applicant's counsel had proposed that in order to substantially simplify the issues that Applicant be allowed to elect to prosecute Claims 18-22, drawn to a method of securing a bone anchor to bone, as permitted by MPEP § 819.01. In a phone message left by the Examiner following such conversation, however Applicant's counsel was advised by the Examiner that the Examiner's supervising Primary Examiner considered such shift from claiming one invention to claiming another impermissible.

In light of such circumstances, Applicant has sought to clarify the election previously made by not only electing to proceed with the claims appearing in Group I, but further indicating its election to prosecute the single disclosed species appearing in Figures 5-7. With respect thereto, Applicant respectfully submits that Claims 1, 2, 4, 6, 7 and 13-16 are readable thereon. Accordingly, all remaining claims are hereby withdrawn.

As such, Applicant respectfully submits that all outstanding matters have been addressed and that the claims, as elected herein, may now be substantively examined. Early notice to that effect is respectfully requested.

To the extent the Examiner has any questions or requires additional information, the Examiner is invited to contact Applicant's counsel at the telephone number listed below.

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If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

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